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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,678	04/10/2001	Tadayuki Suzuki	0425-0821P	3254

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
1616	

DATE MAILED: 12/28/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/744,678</b>	Applicant(s) <b>Suzuki et al</b>
	Examiner <b>Alton Pryor</b>	Art Unit <b>1616</b>
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --		
<p><b>Period for Reply</b></p> <p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p> <ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>		
<p><b>Status</b></p> <p>1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Oct 31, 2001</u></p> <p>2a) <input checked="" type="checkbox"/> This action is <b>FINAL</b>.      2b) <input type="checkbox"/> This action is non-final.</p> <p>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11; 453 O.G. 213.</p>		
<p><b>Disposition of Claims</b></p> <p>4) <input checked="" type="checkbox"/> Claim(s) <u>1-9 and 13-20</u> is/are pending in the application.</p> <p>4a) Of the above, claim(s) _____ is/are withdrawn from consideration.</p> <p>5) <input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6) <input checked="" type="checkbox"/> Claim(s) <u>1-9 and 16</u> is/are rejected.</p> <p>7) <input checked="" type="checkbox"/> Claim(s) <u>13-15 and 17-20</u> is/are objected to.</p> <p>8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.</p>		
<p><b>Application Papers</b></p> <p>9) <input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10) <input type="checkbox"/> The drawing(s) filed on _____ is/are objected to by the Examiner.</p> <p>11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a)<input type="checkbox"/> approved b)<input type="checkbox"/> disapproved.</p> <p>12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p>		
<p><b>Priority under 35 U.S.C. § 119</b></p> <p>13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).</p> <p>a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:</p> <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Certified copies of the priority documents have been received.</li> <li>2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</li> <li>3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> </ol> <p>*See the attached detailed Office action for a list of the certified copies not received.</p> <p>14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).</p>		
<p><b>Attachment(s)</b></p> <p>15) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____</p> <p>18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____</p> <p>19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>20) <input type="checkbox"/> Other: _____</p>		

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Applicant's arguments filed 10/31/01 have been fully considered but they are not persuasive.

I. Rejection of claims 1-9<sup>16</sup> under 35 U.S.C. 103 over Minoru and Masahiko or Carstairs will be maintained in view of 10/31/01 for reasons on record and reasons as follows. New claim 16 is <sup>24-26</sup> <sup>new</sup> added to this rejection.

Applicant argues there exist no motivation to combine the cited prior art references.

Applicant argues unexpected data overcomes the prior art rejection of record.

Examiner argues there exist ample motivation for combining references since each prior art reference cited has the same utility, i.e., each reference teaches compositions for enhancing plant freshness. In the absences of unexpected data: "It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. The idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069m 1072. Examiner agrees that unexpected data for a composition comprising decyl polyglycoside plus tetrehalose and/or gibberellin are presented by the applicant. However, examiner argues that Minoru discloses alkyl glycoside which would include decyl glycoside plus all other alkyl glycosides. A mere showing of unexpected results for a single alkyl glycoside such as decyl glycoside is not ample support for allowing all alkyl glycosides. It is also important to note that Minoru teaches that other classes of glycosides such as aromatic alcohol and alicyclic alcohol glycosides are effective in enhancing the freshness of plants.

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II. Claim Objection

Claims 13-15,17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not suggest the instant composition comprising the limitations of these claims.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Alton Pryor

Primary Examiner, AU 1616

12/22/01